

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2012-091366

05/07/2012

HONORABLE JAMES P. BEENE

CLERK OF THE COURT

C. Gauna

Deputy

IN RE THE MATTER OF
JOSHUA MICHAEL MCADAM

TIMOTHY W DURKIN

AND

TOSHA LYNN RICHMOND

MARY KAY GRENIER

UNDER ADVISEMENT RULING

On March 7, 2012, Petitioner/Father filed an expedited motion for order to show cause regarding temporary orders and a petition to establish paternity, custody, parenting time, and child support and to prevent relocation. On March 28, 2012, Respondent/Mother filed a response to Father's petition and a counter-petition to establish paternity, custody, parenting time and child support and to permit relocation. On May 2, 2012, the Court held a hearing regarding Father's motion for temporary orders.¹ Mother and Respondent/Father testified at the hearing. Based on the testimony and evidence presented at the hearing, the Court issues the following temporary order.

RELOCATION

Mother seeks to relocate outside the state with the parties' minor children. A.R.S. § 25-408(I) sets forth the factors to be considered in determining if relocation is in the best interests of the minor children. In making this finding, the Court considered the factors set forth in A.R.S. §§ 25-403(A) and 408(I) and finds as to those factors:

¹ The Court also addressed Mother's request to permit relocation at the temporary orders hearing.
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A.R.S. § 25-403(A)

1. ***The wishes of the children's parents as to custody.*** Mother and Father agreed that the Court should award the parties joint legal custody of the minor children.
2. ***The wishes of the children as to the custodian.*** No evidence was presented regarding this factor.
3. ***The interaction and interrelationship of the children with the children's parents, the children's siblings and any other person who may significantly affect the children's best interest.*** The minor children have a good and strong relationship with Mother and Father. The minor children also have extended family from both Mother and Father that reside in Arizona.
4. ***The children's adjustment to home, school and community.*** Based upon the evidence presented at the hearing, the minor children seem to be well-adjusted to Mother's home.
5. ***The mental and physical health of all individuals involved.*** No adverse evidence was presented regarding the mental and physical health of Mother, Father or the minor children.
6. ***Which parent is more likely to allow the children frequent and meaningful continuing contact with the other parent.*** Based on the testimony and evidence presented at the hearing, the Court finds that both parents are likely to allow the minor children frequent, meaningful and continuing contact with the other parent.
7. ***Whether one parent, both parents, or neither parent has provided primary care of the children.*** Based on the testimony and evidence presented at the hearing, the Court finds that Mother has historically provided the primary care for the minor children. However, Father has played an active role in parenting the children.
8. ***The nature and extent of coercion or duress used by a parent in obtaining an agreement regarding custody.*** No evidence was offered regarding this factor.

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9. ***Whether a parent has complied with chapter 3, article 5 of this title.*** No evidence was offered at the hearing regarding this factor.
10. ***Whether either parent was convicted of an act of false reporting of child abuse or neglect under section 13-2907.02.*** No evidence was offered at the hearing regarding this factor.
11. ***Whether there has been domestic violence or child abuse as defined in section 25-403.03.*** No evidence was presented at the hearing regarding this factor.

A.R.S. § 25-408(I)

1. ***Whether the relocation is being made or opposed in good faith and not to interfere with or to frustrate the relationship between the children and the other parent or the other parent's right of access to the children.*** Based on the testimony and evidence presented at the hearing, the Court finds that Mother is not requesting relocation with the minor children in order to interfere or frustrate the relationship between Father and the minor children or Father's access to the minor children. Similarly, Father is not opposing Mother's requested relocation in order to frustrate the relationship between Mother and the children. Mother testified that it would be in the best interest of the minor children to reside with her in Alaska. Similarly, Father testified that it would be the best interest of the minor children to remain in Arizona.
2. ***The prospective advantage of the move for improving the general quality of life for the custodial parent or for the children.*** Mother presented evidence that represented that the minor children's general quality of life would improve if allowed to relocate to Alaska. Mother stated that she currently has multiple employment offers in Alaska. Mother is requesting to relocate to Alaska because she has been struggling financially for the last several years in Arizona and sees an opportunity to better her financial situation by relocating to Alaska. Although Mother presented credible evidence to support her claim that her financial situation would likely improve if she relocated to Alaska, the Court must consider more than just the possible material benefits if the children were allowed to relocate to Alaska. It was established that both parents have quite a large extended family in Arizona that are active in the lives of the minor children. Conversely, Mother does not have any familial

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support in Alaska. The minor children have also established other strong ties with their community in Arizona. For example, the parties' oldest child is in school in Arizona and performing well in her current school. Based upon the evidence presented at the hearing, the Court finds that it would be in the best interest of the children to continue to reside in Arizona.

3. ***The likelihood that the parent with whom the children will reside after the relocation will comply with parenting time orders.*** Based upon the evidence presented at the hearing, the Court finds that both parties will comply with the Court's parenting time order.
4. ***Whether the relocation will allow a realistic opportunity for parenting time with each parent.*** Currently, Father has care of the minor children every weekend. Over the past several months, Father has been active in spending time with the children. (See Exhibit 5.) The Court finds that if the minor children are allowed to relocate to Alaska, Father will not have a realistic opportunity for parenting time with the minor children commensurate with the parenting time he currently exercises.
5. ***The extent to which moving or not moving will affect the emotional, physical or developmental needs of the children.*** Based upon the evidence presented at the hearing, the Court finds that the minor children have an established and positive living environment in Arizona. The Court also finds that it would be in the best interest of the children's emotional, physical and developmental needs if they continue to reside in Arizona.
6. ***The motives of the parents and the validity of the reasons given for moving or opposing the move including the extent to which either parent may intend to gain a financial advantage regarding continuing child support obligations.*** The Court finds that both parents have proffered valid reasons for their respective positions regarding the issue of relocation. Mother believes that she will be able to provide a better quality of life for the minor children in Alaska. Conversely, Father believes that it would be in the minor children's best interest to remain in familiar surroundings in Arizona. Although Mother has offered a valid reason for relocation, the Court finds that it is not in the overall best interest of the children to relocate with Mother to Alaska at this time.

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7. ***The potential effect of relocation on the children's stability.*** Based on the testimony and evidence presented at the hearing, the Court finds that allowing the minor children to relocate and reside with Mother in Alaska would not have positive affect on the minor children's stability and therefore would not be in their best interest.

Based on the testimony and evidence presented at the May 2, 2012 hearing; and the factors set forth in A.R.S. §§ 25-403 and 408(I),

IT IS ORDERED granting Father's petition to prevent relocation.

PHYSICAL CUSTODY

As part of the joint legal custody award, Father shall be designated as the primary residential parent. Mother's parenting time shall be as follows:

1. Summer Vacation. Mother shall have care of the minor children from June 17, 2012 through July 17, 2012.
2. Fall Break. Mother shall have care of the minor children during their 2012 Fall Break from 6:00 p.m. on the last day of school until 6:00 p.m. on the day before school resumes.
3. Miscellaneous. Mother may visit the minor child for up to four (4) weekends during Father's scheduled parenting time provided Mother gives Father four (4) weeks written notice. Mother's parenting time shall occur in Arizona and Mother shall not leave the state for any reason during said parenting time. Mother shall inform Father where she is staying during this parenting time and shall provide Father with a telephone number and address where Mother and the minor children can be contacted during the weekend. If Mother does not provide this information to Father before the weekend parenting time, Father may refuse to provide the minor child to Mother. Mother shall be solely responsible for the expenses incurred for this parenting time.

Mother shall pay the expenses for the travel of the minor children to Alaska for her parenting time and shall also pay for her expenses to accompany the minor children during said travel, if necessary. Father shall pay the expenses for the travel of the minor children to return to

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Arizona and shall also pay for his expenses to accompany the minor children during said travel, if necessary.

The parents shall allow the other to have reasonable telephonic and/or Skype communication with the minor children. Neither party shall disrupt the contact between the minor children and the other parent. If the minor children are not available and a message is left requesting a return call, the return call shall be placed within twenty-four (24) hours. The minor children shall be given sufficient privacy to receive and carry out the telephone call, such that a parent shall not overhear their conversation

Neither parent shall take the children outside of the United States without prior written consent of the other parent or court order.

CHILD SUPPORT

Neither party presented evidence at the hearing regarding the issue of child support.² Therefore,

IT IS ORDERED that no child support order will be issued at this time.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

DATED the 7th day of May, 2012

/S/ HONORABLE JAMES P. BEENE

JAMES P. BEENE
JUDGE OF THE SUPERIOR COURT

² Neither party moved for the admission of Mother or Father's affidavit of financial information. No evidence of the parties' financial situation was presented at the May 2, 2012 hearing.

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All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.